

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.7093 OF 1998

FOR APPROVAL AND SIGNATURE:

HON'BLE MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

CHELAJI DHULAJI
VERSUS
SECRETARY, R & B DEPTT.

Appearance:

MR NR SAHANI FOR MR PH PATHAK for petitioners
MR VB GHARANIA for respondent

Coram: MR.JUSTICE S.K. Keshote,J
Date of order: 12/05/99

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. Notices were issued in this matter by the court on 1.9.98 with the purpose and object to see that looking to the nature of the case it may be disposed of expeditiously but the respondents have not cared to file reply to the special civil application on the returnable date. On 15.10.98, this Court has ordered as under:

Twice the matter has been adjourned at the request of Mr.Hasurkar for respondent No.3. Today also when the matter is called out, Mr.Hasurkar stated that he has no instructions in the matter. In view of this, by way of ad-interim relief, respondents are directed to consider the question to pay the pension to the petitioner latest by 30.10.98. In case no such decision is taken, till that time, the respondent shall start paying provisional pension to the petitioner w.e.f. 1.11.98. S.O. to 24.11.98. In the meantime, respondents are directed to file affidavit in reply.

#. Thereafter, the respondents filed reply on 24th November 1998. On 1.3.99, this special civil application has been admitted and the court passed the following order.

Rule. Notice as to interim relief and hearing of Rule returnable on 5.4.99. In the meantime, the respondents are directed to calculate the amount of the retiral dues admissible to the petitioner under various Heads on the basis of the information available. The petitioner shall also furnish the necessary details which may be required for the purpose of preponing the pension papers.

#. It is the case of petitioner that though he served the respondent-Department from 1976 to 1997, as a labourer and on reaching the age of superannuation he was superannuated from services from 26th March 1997, but he has not been paid pension or other retirementary benefits. He made a representation and notice has also been sent through the advocate for this grievance but the respondents even has not cared to acknowledge this notice what to say to give relief to the petitioner. Hence this special civil application before this Court.

#. I find from the reply to the special civil

application that from 1.4.97, the respondents have sanctioned the minimum pension to the petitioner but he has not been given other retirementary benefits. A defence has been taken that there is no reliable evidence on the service record of the petitioner to decide his actual date of birth. It has stated that the age could be decided on the basis of medical certificate. I fail to see any logic, justification and fairness in the reply of the respondents. It is really a reply not befitting the welfare State as well as the reply which clearly exhibits how red-tapism is there in the office of the welfare State. There is material available with the respondent regarding the date of birth of the petitioner which is clearly borne out from the fact that he has been superannuated on 26th March 1997. If the date of birth of th petitioner was not available, I fail to see how he has been superannuated. The respondents have not disputed that the petitioner served the Department from 1976 to 1997. When he served for such a long period I fail to understand why the respondents have not cared to get date of birth of the petitioner recorded in the service record of the petitioner. This slackness, negligence and carelessness is clearly attributable to the functionaries and officers of the State of Gujarat. For their own lapses, negligence, carelessness, it is really shocking that a low paid employee of the category of labourer has been constrained to approach to this Court. Litigation in this Court heavily costs and it is beyond the reach of pocket of the petitioner, more so when he has not been paid any retirementary benefits on his reaching the age of superannuation. The respondents should not have taken such an illegal and technical approach. Even if it is taken that nothing is there on the service record of the petitioner regarding his date of birth, then it is open to the respondents to send him before medical board for ascertaining of his age. This should have been done much earlier to the date on which the petitioner has attained the age of superannuation as per their own record but now after the retirement of the petitioner on 26th March 1997, they cannot be permitted to raise all these objections. The petitioner's date of birth is there. Otherwise, the respondents could not have ordered for his retirement on 26th March 1997.

#. In the result, this special civil application succeeds and the same is allowed. The respondents are directed to fix the pension and other retirementary benefits of the petitioner taking his date of birth on the basis of which he has been ordered to be retired on 26th March 1997, i.e. his date of birth may be taken to be 25th March 1937. All the retirementary benefits which

are payable to the petitioner if so far have not been determined and calculated, should be calculated within one month from the date of receipt of writ of this order and paid to the petitioner within a period of one month next. The respondents are further directed to pay to the petitioner interest on all retirement benefits at the rate of 12% p.a. from the due date till the payment thereof. The respondent-State of Gujarat is directed to pay to the petitioner, Rs.2,000/= by way of costs of this special civil application as what the learned counsel for the petitioner submitted as the amount spent by petitioner towards expenses of litigation. Rule made absolute in aforesaid terms.

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(sunil)